IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.546 OF 2007

Ayub Basir Kedekar ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. H.S. Venegaokar, Advocate for the applicant.
Mr. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 27TH FEBRUARY, 2007.

P.C.

. Heard Mr. Venegaonkar, learned Counsel for the applicant and Mr. Shinde, learned APP for the State. The applicant seeks to be released on bail in Crime No. 57/2006 registered at Ajara Police Station for the offence punishable under Sections 363, 376(2)(f) read with 511 of Indian Penal Code.

2. The prosecution case, in brief, is that on 6/11/2006 in between 6.30 and 7.30 P.M. the prosecutrix, a girl aged about 8 years, was playing at some distance from her house. At that time, accused, who is a neighbour, allured her to the terrace of a hall near the house and after removing her underwear

attempted to commit rape on her. He rubbed his penis on the genital of the girl. She cried and therefore, he made her to put on her under wear. Then she was allowed to go back to her house. On enquiry by her mother, she disclosed this fact. On the same day, the report was lodged and she was also examined by the Medical Officer, which reveals that there was no sign of intercourse or physical abuse.

3. The learned Counsel for the applicant contends that except the bare words of the child there is no evidence, nor there is any corroboration to her statement, which was recorded two days after the incident. The applicant is a married person having two children. He is in custody for last more than three months. He is willing to abide by any conditions which may be imposed by the court while granting bail. Mr. Shinde, learned APP opposed the bail application contending that it is the case of actual rape, because an attempt was made for penetration. However, at this stage, it will not be proper to make any comments on his contention. The prosecution case itself is that there was no penetration and it is the case of attempt to commit rape, on a small child. As no injury or any

marks were found on her person, medical report does not provide any corroboration to the prosecution story and it appears that statement of the girl her self was recorded two days after the FIR was lodged. In these circumstances, I find that there cannot be any justification to refuse bail to the applicant, of course, some stringent conditions may be imposed while granting bail.

4. The applicant be released on his executing P.R. of Rs. 20,000/- with surety in like amount with the conditions that he shall not tamper with prosecution evidence and shall not enter within the limits of Gadhinglaj town till the end of the trial. He shall supply his residential address after being released on bail to the police station Ajara and shall report at the police station nearest to the place of his residence on every Sunday between 4 to 6 P.M. He shall not misuse the bail.

(J.H. BHATIA, J.)